

Request for Rulemaking

Major Woody Stem Exception to Public Resources Code Section 4293

Title 14 California Code of Regulations Division 1.5, Chapter 7 Fire Protection, Article 1 Section 1257 Add a New Sub-section 1257(a)(3)

Summary

Pacific Gas and Electric Company (PG&E) respectfully requests that the Board of Forestry and Fire Protection consider adding a new sub-section to Title 14 of the California Code of Regulations section 1257. The proposed new regulation, sub-section 1257(a)(3) addresses healthy, mature trees that are closer to power lines than the regulations normally allow, but are sufficiently rigid that they do not present a risk to public safety. These trees are commonly referred to as major woody stems, or MWS. The proposed regulations represent a new exception to the requirements of Public Resources Code (PRC) 4293 for MWS.

Necessity

The proposed regulation would reconcile the Code of Regulations with California Public Utilities Commission (Commission or CPUC) General Order 95 Rule 35. Like the minimum clearance provisions of Public Resources Code section 4293, CPUC General Order 95 requires minimum vegetation clearances from high voltage power lines. However, Rule 35 recognizes that this minimum clearance may be reduced without compromising safety where the tree is mature, healthy and sufficiently rigid to resist deflection by wind so as to prevent contact with the high voltage line. The Commission refers to this as the “Major Woody Stem” (MWS) exception.

Research conducted by PG&E has shown that the major woody stems of healthy, mature trees of a minimum size occurring within the minimum clearance distances of energized power lines required by PRC 4293 can remain without risk of conducting the energy (arcing) and without risk of fire. PG&E believes that the proposed exception is justified since the risk of fire is negligible presenting little risk to public safety.

Authority

The authority of the Board of Forestry and Fire Protection to take the action requested is based upon Public Resources Code 4111 and 4293.

Clarity

The new section, as drafted, provides the reasonable person within the regulated community a clear understanding that healthy trees of a certain strength and rigidity occurring more than 6 inches from the conductors, but within the clearance minimum distances of PRC 4293 are excepted from those clearance distances.

Consistency

The proposed regulation, as drafted, provides greater clarity and consistency with California Public Utilities Commission General Order 95 Rule 35 than the current language within 14 CCR 1257.

Reference

Public Resources Code 4293 is implemented by the Department of Forestry and Fire Protection and the Board of Forestry through regulations adopted by the Board in Title 14 California Code of Regulations, Chapter 7 (“Fire Protection”), Article 4 (“Fire Prevention Standards for Electric Utilities”). 14 CCR 1256 clarifies the minimum clearance requirements for electric lines. 14 CCR 1257 provides certain exceptions to these minimum clearance requirements. PG&E is proposing that the minimum clearance exceptions in section 1257 be expanded to include the same CPUC-authorized MWS exemption by adopting the proposed regulation.

Non-duplication

California Public Resources Code 4293 and California Code of Regulations section 1256 regulate the minimum power line clearances in State Responsibility Areas during fire season. Under jurisdiction granted it by Article XII of the California Constitution, the California Public Utilities Commission also regulates power line clearances through its General Order 95, Rule 35 that all utilities in California also must follow at all times and in all areas of the state. The proposed regulation is designed to reconcile the Fire Prevention Standards for Electric Utilities found in the Code of Regulations with Rules for Overhead Electric Line Construction found in CPUC General Order 95 Rule 35. At different times of the year, both regulations regulate the same trees, yet they are not meaningfully harmonized to prevent avoidable conflicts.

Necessarily, the regulations promulgated by the Board and/or Department of Forestry and Fire Protection and the CPUC overlap. To the extent that the agencies can avoid obvious inconsistencies, the scheme of tree clearance regulation can be formed into a seamless whole. By including the same Major Woody Stem exemption in the Fire Prevention regulations as currently contained in the CPUC regulations, the proposed modification would reconcile over-lapping regulations.

Without the proposed exception for MWS trees, tree removals would result. Many tree removals would involve older, majestic trees that frequently occur not in an isolated setting, but in customers’ front yards and neighborhoods. We expect that not only would the removal of these trees create an alteration of habitat and the attendant risks of adverse impacts to forest resources, but also considerable public interest and controversy.

Safeguards that minimize the risk associated with MWS trees or prevent injury are built into PG&E’s program. PG&E maintains a database inventory of MWS trees that is updated every year.

Each tree is initially evaluated by a certified arborist inspector with a minimum of five years' experience. Before a particular tree can be considered exempt, PG&E conducts a seven-point evaluation and the tree must fit all seven of the exemption criteria. The tree must be greater than six (6) inches from the line with no evidence of prior contact with the lines. The tree has to have been established for at least 10 years, must be vigorous and healthy, and with a diameter at breast height (DBH) of at least 10 inches. The size of the trunk or limb at the conductor level must be at least six (6) inches in diameter. The tree must not have "scaffold branches," below eight and one-half feet from the ground (so the tree can not be easily climbed). In addition to tree characteristics, local weather conditions, potential line sag or sway, wind and snow loading potential, impacts of other branches and trees, soil conditions and direction of lean are all considered as part of the evaluation. Thereafter, the tree is annually re-inspected by our contracting arborists.

MWS should not be confused with so called, "hazard trees," that are by definition, not vigorous or healthy but that exhibit some manifestation of decline. In the draft regulation, dead, dying¹ and defective trees expressly do not qualify for an exemption and require treatment.

The proposed draft regulation allows for exemptions to apply to limbs where appropriate. We offer the following reasoning why limbs should be eligible for the exemption.

- A distinction should be drawn between overhanging limbs and limbs eligible for an exemption pursuant to this MWS proposal. Overhanging limbs, whether occurring six inches, four feet or 30 feet over the lines are different from substantial limbs that happen to occur, in a healthy state, near a line. For example, limbs eligible for exemption may occur underneath the lines, yet within four feet, presenting no risk of failure onto the lines.
- Overhanging limbs really represent a separate risk issue more like, "hazard trees." By inspecting trees every year and applying the rigorous criteria for meeting the exemption requirement, PG&E attempts to ensure that the proper trees or limbs remain eligible for exemption while mitigating those that PG&E determines are not eligible.
- The purpose of the MWS exemption is to avoid trimming or removing trees that are technically within the prescribed clearance requirement but pose no risk of ignition. Because the limbs eligible for exemption have been determined through inspection to be of sufficient size and/or having the necessary characteristics such as rigidity and bark thickness, they do not present a risk of ignition through contact.
- PG&E does not keep data describing whether or not the exempt tree represents a stem or a limb and therefore, PG&E does not actually have an inventory of trees eligible for exemption based upon limbs. Judging from current PG&E data however, most of the MW tree records are conifers indicating that most are stems rather than limbs. Of the total number of MWS trees in the database, about 7-8% are hardwood species that exhibit the types of branching at issue.

¹ We propose that, "dying," mean the same as defined in 14 CCR 895.1.

According to our database records, PG&E currently monitors about 9,000 MWS in State Responsibility Areas. In general, the MWS trees in our system are large – over 18 inches DBH and up to several feet in diameter.

Included in the draft regulation is a reference to, “reasonably foreseeable local wind and weather conditions,” and PG&E proposes that its meaning be derived from data. The Department of Forestry and Fire Protection relies upon data from nearly 100 weather stations throughout the state during fire season, basing its fire weather forecasting system upon that data. PG&E proposes that the term, “reasonably foreseeable local wind and weather conditions,” simply mean that if the weather conditions during a particular incident involving a MWS are within two standard deviations of the annual fire season mean for the closest CDF controlled weather station, then the weather conditions were, “reasonably foreseeable.” Weather conditions outside two standard deviations of the mean would not be.

Specific Purpose of the Regulation

- The proposed additional regulation, *Major Woody Stem Exception to PRC 4293*, is proposed for the purposes of, but not limited to: Reconciling, in part, 14 CCR 1257 with the California Public Utilities Commission General Order 95, Rule 35.
- Providing a measure of fire protection more consistent with the actual risk involved.
- Protecting mature and stately trees from needless trimming or removal.
- Preserving vital habitat to the greatest practical extent consistent with public safety and electric system reliability.
- Clarifying enforcement standards for the Department of Forestry and Fire Protection.
- Reducing enforcement related costs incurred by the Department of Forestry and Fire Protection related to PRC 4293.
- Clarifying compliance standards for the regulated public with regard to PRC 4293.

Disclosures Regarding the Proposed New Regulation

The proposed new regulation is expected to have the following impacts:

- Mandate on local agencies and school districts: None expected.
- Cost or savings to any state agency: The proposed regulation is expected to reduce enforcement costs related to PRC 4293 incurred by the Department of Forestry and Fire Protection.
- Other non-discretionary costs or savings imposed on local agencies: None expected.
- Cost or savings in federal funding to the state: None expected.
- A statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses

in other states is not expected. A positive impact is anticipated as compliance and enforcement costs related to PRC 4293 are expected to be reduced.

- No significant impact on housing costs is expected.
- The proposed regulation, if adopted is not expected to have an adverse impact on small business because the proposed regulation is related to fire prevention standards.
- The proposed regulations do not conflict with or duplicate federal regulations.
- Adoption of the proposed regulation is not expected to:
 - 1) Create or eliminate jobs within California.
 - 2) Create new or eliminate existing businesses in California.
 - 3) Affect the expansion of businesses active in California.